U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31134849

Date: JUNE 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner works as a general and operations manager who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a

one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner earned a foreign Bachelor of Technology in Civil Engineering in addition to a Master of Business Administration from a U.S. institution of higher learning. He now works as a general and operations manager for an e-commerce company.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed he met seven of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to judging and performing in a leading or critical role, but that he had not satisfied the criteria associated with prizes or awards, membership, original contributions, authorship of scholarly articles, or a high salary or remuneration. On appeal, the Petitioner maintains that he meets the evidentiary criteria the Director declined to grant. After reviewing all the evidence in the record, we conclude he has not satisfied any additional criteria meaning he has not met at least three criteria to warrant a final merits determination.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Director determined that the Petitioner met the requirements of this criterion, and we will not disturb that conclusion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Director also concluded the Petitioner satisfied this criterion's requirements and we agree with the assessment.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner claims a single award for his employer awarded for his operational performance in 2021. The Director determined that even though the award reflected institutional recognition for excellence, it did not reflect national or international recognition for excellence in the field but instead was limited to recognition from his employer. Based on these findings, the Director concluded he did not meet the requirements of this criterion.

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the regulation's plain language the evidence must establish: (1) the foreign national is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner argues several points on appeal, but we will first address the dispositive issue of whether he demonstrated his award was nationally or internationally recognized. The Petitioner's appeal brief identifies two articles he contends demonstrate the award garnered attention from the media. Despite one article being about the online sales industry and the other being about the Petitioner's employer directly, a review of both articles does not reveal any mention of the award. This material does not adequately support the Petitioner's claims.

He further primarily relies on one letter on appeal to contend the award is at least nationally recognized. Even this letter only reflects the award's recognition exists within his employer's business and doesn't extend beyond that into the broader field. We note that agency policy addresses employer awards limited only to its own personnel and states "an award available only to persons within a single locality, employer, or school may have little national or international recognition." *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.

National and international recognition results, not from the individual or entity who issued the award, but through the awareness of the accolade in the eyes of the field nationally or internationally. For instance, the President of the United States signs letters of appreciation for retiring military or Department of Defense civilian personnel.[1] However, the simple fact that an individual in a position of high authority signs a document, does not transform the document into a nationally or internationally recognized item. National and international recognition should be evident through specific means; for example but not limited to, national or international-level media coverage. Additionally, unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized. Sufficiently probative evidence that an award is nationally or internationally recognized is generally material from sources besides the issuing entity. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021).

[1] *Presidential Letter of Appreciation*, Executive Services Directorate, https://www.esd.whs.mil/CMD/ploa/. Similarly, the presidential physical fitness award is not a nationally or internationally recognized award for excellence in athletics. Rather, it represents students reaching the 85th percentile in certain physical activities. *Get Fit!*, President's Council on Physical Fitness and Sports, https://www.govinfo.gov/content/pkg/GOVPUB-HE20-PURL-LPS39913/pdf/GOVPUB-HE20-PURL-LPS39913.pdf.

We therefore conclude the Petitioner has not demonstrated his claimed award is nationally or internationally recognized as the regulation mandates. He therefore has not submitted evidence that meets the plain language requirements of this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Director discussed the evidence submitted for this criterion and found that the Petitioner did not establish his eligibility. On appeal, the Petitioner does not contest the Director's findings for this criterion or offer additional arguments. Therefore, the Petitioner has abandoned his eligibility claims under this criterion. *Matter of F-C-S-*, 28 I&N Dec. 788, 789 n.3, 791 n.6 (BIA 2024) (finding issues not challenged on appeal are waived). Accordingly, the Petitioner has not submitted qualifying evidence under this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner provided his blogposts on two websites, and two additional articles. The Director determined that the Petitioner did not meet the requirements of this criterion. On appeal the Petitioner contests the Director's findings relating to three articles that appeared in various publications to include: the first article published in DCVelocity, a second article published in three publications, and the final one published in CSCMP's Supply Chain Quarterly.

This criterion contains multiple evidentiary elements the Petitioner must satisfy. The first element is that the Petitioner is an author of scholarly articles in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. We consider these articles to fall within two distinct areas.

One area is within the academic arena in which a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. The next area lies outside of the academic arena in which a scholarly article should be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The second evidentiary element this criterion requires is that the scholarly articles appear in one of the following: (1) a professional publication, (2) a major trade publication, or (3) in a form of major media. Relevant factors a petitioner should demonstrate include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership are high relative to similar publications (for major trade publications and other major media). *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The Petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The Petitioner claims each of his articles appeared in both "reputable [major] trade publications" and "major media outlets." We note he only needs to demonstrate the articles appeared in one of the required publication types, not both. So, he must demonstrate the intended audience and that the circulation or readership qualifies as "major" relative to other publications or media in the field.

We begin with the publication DC Velocity. The Petitioner provided two forms of evidence supporting the circulation or readership for this publication. First was this publisher's 2020 Media Kit reflecting the publications total reach both in print and electronically. But we are not required to accept a publication's own claims relating to whether it qualifies as major media, as such self-serving claims are not sufficiently probative. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D. N.J. 2021) (citations omitted). Probative evidence is the type that "must tend to prove or disprove an issue that is material to the determination of the case." *Matter of E-F-N-*, 28 I&N Dec. 591, 593 (BIA 2022) (quoting *Matter of Ruzku*, 26 I&N Dec. 731, 733 (BIA 2016)); *see also* Evidence, *Black's Law Dictionary* (11th ed. 2019). Therefore, if some form of the Petitioner's evidence does not adequately prove their contention, then it is not considered to be probative.

The second type of evidence the Petitioner provided relating to DC Velocity is the website's online traffic and rankings from an outside service, which reflected this website ranks 6,306 in their industry. This falls short of demonstrating this form of media qualifies as major, meaning the Petitioner did not demonstrate the significance or relevance of these readership or viewership numbers to establish the website's major status.

The next article appeared in five sources: Logistics Management; Modern Materials Handling; Supply Chain 24/7; Supply Chain Camp; Supply Chain Management Review. The evidence the Petitioner provided for the publication Logistics Management suffers a similar shortcoming as the DC Velocity publication; material from the publisher as well as online traffic and rankings, but in this case reflecting an industry ranking of 4,789. Again, this fails to demonstrate the viewership numbers' significance or relevance regarding the major status of the websites. And the remaining publications the Petitioner relies on in his appeal brief exhibit similar evidentiary shortcomings.

We agree with the Director that the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner provided his earnings data as well as evidence of remuneration. The Director determined that the Petitioner did not meet the requirements of this criterion. The Director noted that the Petitioner provided evidence of average salary statistics of general operations managers in which to compare with his own salary. The Director concluded that comparison was not a correct one because a general operations manager was a comparable field, but it was not sufficiently within the same specialty in which the Petitioner had been working.

On appeal, the Petitioner alleges the Director mistakenly decided that information relating to a general operations manager was not sufficiently related to his current work in which his salary information

derived. We note that some of the letters in the record described the Petitioner's work for his current employer as an operations manager, so we will set that facet aside.

However, the regulation's plain language requires the Petitioner to establish his salary is high when compared to others in the field. As such, average statistics alone do not meet this requirement. *Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019) (agreeing that average salary levels do not allow for an appropriate basis for comparison in determining a high salary "in relation to others in the field"). The surveys that simply reflected that the Petitioner's salary was higher than the average salaries of general operations managers were inadequate. Additionally, the Petitioner must show salary statistics in the same general area of the country relative to his own earnings, so the material showing the average *national* salaries were also inadequate.

But the Petitioner also offered evidence from the Foreign Labor Certification Data Center Online Wage Library for his area in New Jersey for the General and Operations Managers occupational title reflecting the following wages:

- Level 1 Wage: $70,491 year
- Level 2 Wage: $114,629 year
- Level 3 Wage: $158,787 year
- Level 4 Wage: $202,925 year

The Petitioner provided a letter from his employer reflecting a base salary of approximately $182,000. We observe that prevailing wage rates are comprised of three tiers (the lowest paid one-third, the middle third, and the highest paid one-third). And, the Occupational Employment Survey assigns the wage levels within these tiers:

- Level 1 is the average of the lowest paid one-third in an occupation, or approximately the 17th percentile;
- Level 2 is approximately the 34th percentile;
- Level 3 is approximately the 50th percentile, or the overall average wage for an occupational classification; and
- Level 4 is the average of the highest-paid two-thirds, or approximately the 67th percentile.

Because the Petitioner's salary is situated almost halfway between levels 3 and 4, that would place his salary below the 67th percentile for this occupational category in the area where he works. The Petitioner has not demonstrated his salary—that falls below the 67th percentile—is high in relation to others performing similar work in his geographic region. We further note the U.S. Department of Labor's Occupational Information Network reflects that in the same location he presented the Foreign Labor Certification Data Center Online Wage Library evidence, an annual high salary amounts to $239,200 or more and this data was based on 2023 wage data. *Local Wages 11-1021.00 - General and Operations Managers*, O*NET OnLine (May 21, 2024), https://www.onetonline.org/link/localwages/11-1021.00?zip=08691.

Turning to the Petitioner's claims that his non-salary remuneration is significantly high in relation to others in the field, he compares three years of his stock awards to data from salary.com reflecting "a

national average with a geographic differential." Again, surveys detailing salaries at the upper end of an occupation are more valuable than those showing only average wages. Proving a salary is "above average" typically doesn't suffice to establish a "significantly high remuneration." More comprehensive wage data is needed to effectively demonstrate significantly high remuneration earnings relative to peers. This evidence's value is further diminished as it reflects data for the entire United States rather than in the Petitioner's same geographic area. The Petitioner's evidence from indeed.com suffers from these same shortcomings.

We conclude the Petitioner's evidence does not aid him in meeting his burden of proof under this criterion and he has not submitted evidence that meets the plain language requirements here.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner's claims here involve a metric he created along with standard operating procedures, he developed protocols for his employer's automation, he formulated a best practices model, and his previously mentioned articles he authored. The Director determined that the Petitioner did not meet the requirements of this criterion.

The primary requirements here are that the Petitioner's contributions in his field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner attempts to extrapolate the size of his employer to indicate that significant contributions within his organization should equate to the broader e-commerce field as a whole. We do not agree. The Petitioner's employer does not operate a monopoly in their area, nor are they the only major company within that space. It therefore stands to reason that if the Petitioner's achievements were at the level he contends, that his employers' competitors would have considered adopting those methods and activities. But he has not made such a showing in this appeal. The Petitioner offered no evidence showing the widespread implementation of his claimed achievements that have been seminal, or that it otherwise equates to an original contribution of major significance in the field. And we are not persuaded that limiting the Petitioner's contributions to one of many players in the field exhibits the influence necessary to satisfy this criterion's requirements. *See Amin*, 24 F.4th at 394 (finding that a foreign national's methods must not only be adopted by those outside a petitioner's employer, but those outside organizations also must have been able to successfully replicate the transformative methods for them to amount to a contribution of major significance to the field as a whole.)

Further, the brief reflects, "[t]he support letters from various professionals in the field are not merely anecdotal; they outline [the Petitioner's] innovative techniques and strategies, which have been widely adopted by competitors and implemented by professionals within the industry." A review of the Petitioner's more in-depth appellate analysis and the evidence he presents in support offer no additional insight into how his claims extend beyond his employer. While some of his achievements have been instrumental to his employer, those have been considered and incorporated into the Director's evaluation of him performing in a leading or critical role under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii). Neither the Petitioner, nor the letters supporting this filing explain how those achievements expanded their reach beyond his employer.

And regarding his authorship of articles under this criterion, not only has he not explained or shown how those influenced the broader field, but we considered this evidence under a separate criterion. Because the regulations contain a separate criterion regarding the authorship of scholarly articles, we will not presume that evidence relating to that criterion is evidence that the Petitioner also meets this one. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. Publications are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "*major* significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010).

In 2010, the *Kazarian* court reaffirmed its holding that this office did not abuse its discretion in finding that the foreign national had not demonstrated contributions of major significance. *Kazarian*, 596 F.3d at 1122. To hold otherwise would render meaningless the statutory requirement under section 203(b)(1)(A)(i) of the Act for extensive evidence or the regulatory requirement at 8 C.F.R. § 204.5(h)(3) that the Petitioner meet at least three separate criteria. Thus, there is no presumption that every published article is a contribution of major significance in the field; rather, the Petitioner must document his article's actual impact.

The regulation requires original contributions of major significance in the field. While the Petitioner has established he has made such impacts to his employer, his achievements and accomplishments as of the priority date fail to rise to the level of being considered of "major" significance in the field as a whole. As a result, the Petitioner has not submitted qualifying evidence that meets the plain language requirements of this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the

"extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.